

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff's application to proceed *in forma pauperis* is granted (docket #1). The court now reviews the complaint.

## **I. Screening Pursuant to 28 U.S.C. § 1915A**

Federal courts must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C. § 1915A(b)(1),(2). *Pro se* pleadings, however, must be liberally construed. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d. 696, 699 (9th Cir. 1988). To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

In addition to the screening requirements under § 1915A, pursuant to the Prison Litigation

1 Reform Act of 1995 (PLRA), a federal court must dismiss a prisoner's claim, "if the allegation of  
 2 poverty is untrue," or if the action "is frivolous or malicious, fails to state a claim on which relief may  
 3 be granted, or seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C.  
 4 § 1915(e)(2). Dismissal of a complaint for failure to state a claim upon which relief can be granted is  
 5 provided for in Federal Rule of Civil Procedure 12(b)(6), and the court applies the same standard under  
 6 § 1915 when reviewing the adequacy of a complaint or an amended complaint. Further, "a finding of  
 7 factual frivolousness is appropriate when the facts alleged rise to the level of the irrational or the wholly  
 8 incredible, whether or not there are judicially noticeable facts available to contradict them." *Denton v.*  
 9 *Hernandez*, 504 U.S. 25, 33 (1992). When a court dismisses a complaint under § 1915(e), the plaintiff  
 10 should be given leave to amend the complaint with directions as to curing its deficiencies, unless it is  
 11 clear from the face of the complaint that the deficiencies could not be cured by amendment. *See Cato*  
 12 *v. United States*, 70 F.3d 1103, 1106 (9<sup>th</sup> Cir. 1995).

13 Review under Rule 12(b)(6) is essentially a ruling on a question of law. *See Chappel v.*  
 14 *Laboratory Corp. of America*, 232 F.3d 719, 723 (9th Cir. 2000). Dismissal for failure to state a claim  
 15 is proper only if it is clear that the plaintiff cannot prove any set of facts in support of the claim that  
 16 would entitle him or her to relief. *See Morley v. Walker*, 175 F.3d 756, 759 (9th Cir. 1999). In making  
 17 this determination, the court takes as true all allegations of material fact stated in the complaint, and the  
 18 court construes them in the light most favorable to the plaintiff. *See Warshaw v. Xoma Corp.*, 74 F.3d  
 19 955, 957 (9th Cir. 1996). Allegations of a *pro se* complainant are held to less stringent standards than  
 20 formal pleadings drafted by lawyers. *See Hughes v. Rowe*, 449 U.S. 5, 9 (1980); *Haines v. Kerner*, 404  
 21 U.S. 519, 520 (1972) (per curiam). While the standard under Rule 12(b)(6) does not require detailed  
 22 factual allegations, a plaintiff must provide more than mere labels and conclusions. *Bell Atlantic Corp.*  
 23 *v. Twombly*, 127 S.Ct. 1955, 1964-65 (2007). A formulaic recitation of the elements of a cause of action  
 24 is insufficient. *Id.*, *see Papasan v. Allain*, 478 U.S. 265, 286 (1986).

25 Additionally, a reviewing court should "begin by identifying pleadings [allegations] that, because  
 26 they are no more than mere conclusions, are not entitled to the assumption of truth." *Ashcroft v. Iqbal*,  
 27 129 S.Ct. 1937, 1950 (2009). "While legal conclusions can provide the framework of a complaint, they  
 28 must be supported with factual allegations." *Id.* "When there are well-pleaded factual allegations, a

1 court should assume their veracity and then determine whether they plausibly give rise to an entitlement  
 2 to relief. *Id.* “Determining whether a complaint states a plausible claim for relief [is] a context-specific  
 3 task that requires the reviewing court to draw on its judicial experience and common sense.” *Id.*

4 Finally, all or part of a complaint filed by a prisoner may be dismissed *sua sponte* if the  
 5 prisoner’s claims lack an arguable basis either in law or in fact. This includes claims based on legal  
 6 conclusions that are untenable (e.g., claims against defendants who are immune from suit or claims of  
 7 infringement of a legal interest which clearly does not exist), as well as claims based on fanciful factual  
 8 allegations (e.g., fantastic or delusional scenarios). *See Neitzke v. Williams*, 490 U.S. 319, 327-28  
 9 (1989); *see also McKeever v. Block*, 932 F.2d 795, 798 (9th Cir. 1991).

10 Allegations in a *pro se* complaint are held to less stringent standards than formal pleadings  
 11 drafted by lawyers. *See Hughes v. Rowe*, 449 U.S. 5, 9 (1980); *Haines v. Kerner*, 404 U.S. 519, 520-21  
 12 (*per curiam*); *see also Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). All  
 13 or part of a complaint filed by a prisoner may be dismissed *sua sponte*, however, if the prisoner’s claims  
 14 lack an arguable basis either in law or in fact. This includes claims based on legal conclusions that are  
 15 untenable (e.g. claims against defendants who are immune from suit or claims of infringement of a legal  
 16 interest that clearly does not exist), as well as claims based on fanciful factual allegations (e.g. fantastic  
 17 or delusional scenarios). *See Neitzke*, 490 U.S. at 327-28; *see also McKeever v. Block*, 932 F.2d 795,  
 18 798 (9th Cir. 1991). Moreover, “a finding of factual frivolousness is appropriate when the facts alleged  
 19 rise to the level of the irrational or the wholly incredible, whether or not there are judicially noticeable  
 20 facts available to contradict them.” *Denton v. Hernandez*, 504 U.S. 25, 33 (1992). When a court  
 21 dismisses a complaint under § 1915(e), the plaintiff should be given leave to amend the complaint with  
 22 directions as to curing its deficiencies, unless it is clear from the face of the complaint that the  
 23 deficiencies could not be cured by amendment. *See Cato v. United States*, 70 F.3d 1103, 1106 (9<sup>th</sup> Cir.  
 24 1995).

25 **II. Instant Complaint**

26 Plaintiff, who is currently incarcerated at Lovelock Correctional Center (“LCC”), has sued  
 27 numerous Nevada Department of Corrections (“NDOC”) defendants. Plaintiff claims that in 1996,  
 28 prosecutors tried to coerce plaintiff into testifying against a defendant in his murder trial. Plaintiff

1 refused and alleges that prison officials punished him by labeling him a snitch. Plaintiff alleges that  
 2 defendants violated his Eighth Amendment rights by failing to protect him from imminent danger of  
 3 attack by other inmates. Plaintiff claims that he was attacked while at Southern Desert Correctional  
 4 Center. It is unclear when this attack occurred. But plaintiff asserts that subsequent to that attack, on  
 5 December 21, 2008, plaintiff was attacked while housed at High Desert State Prison.

6 Because § 1983 contains no specific statute of limitations, federal courts should borrow state  
 7 statutes of limitations for personal injury actions in § 1983 suits. *See, e.g., Wallace v. Kato*, 549 U.S.  
 8 384 (2007). In Nevada, a personal injury action must be brought within two years. Nev. Rev. Stat.  
 9 11.190(4)(e). Plaintiff claims that defendants failed to protect him and that he was attacked most  
 10 recently on December 21, 2008. However, plaintiff filed this action on January 24, 2011. Accordingly,  
 11 while it is not entirely clear whether the subject of plaintiff's complaint is both attacks or the one that  
 12 allegedly occurred more recently on December 21, 2008, his claims are barred by the statute of  
 13 limitations. Plaintiff's complaint is dismissed with prejudice.

14 **III. Conclusion**

15 **IT IS THEREFORE ORDERED** that plaintiff's application to proceed *in forma pauperis*  
 16 (docket #1) is **GRANTED**. Plaintiff Jason M. Jones, **Inmate No. 70541**, will be permitted to maintain  
 17 this action to conclusion without prepayment of the full filing fee. Plaintiff will not be required to pay  
 18 fees or costs, other than the filing fee, or give security therefor. This Order granting *in forma pauperis*  
 19 status shall not extend to the issuance and service of subpoenas at government expense.

20 **IT IS FURTHER ORDERED** that, pursuant to 28 U.S.C. § 1915, as amended by the Prisoner  
 21 Litigation Reform Act of 1996, the Nevada Department of Corrections shall pay to the Clerk of the  
 22 United States District Court, District of Nevada, 20% of the preceding month's deposits to the plaintiff's  
 23 inmate account (in months that the account exceeds \$10.00) until the full \$350 filing fee has been paid  
 24 for this action. The Clerk shall send a copy of this order to the attention of Albert G. Peralta, Chief of  
 25 Inmate Services for the Nevada Department of Prisons, P.O. Box 7011, Carson City, NV 89702.

26 **IT IS FURTHER ORDERED** that, even if this action is dismissed, or is otherwise  
 27 unsuccessful, the full filing fee shall still be due, pursuant to 28 U.S.C. §1915, as amended by the  
 28 Prisoner Litigation Reform Act of 1996.

1       **IT IS FURTHER ORDERED** that the Clerk shall **DETACH** and **FILE** the complaint (docket  
2 #1-1).

3       **IT IS FURTHER ORDERED** that plaintiff's complaint is **DISMISSED** with prejudice for  
4 failure to state a claim for which relief may be granted.

5       **IT IS FURTHER ORDERED** that the Clerk shall **ENTER JUDGMENT** accordingly and close  
6 this case.

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8       DATED this 6th day of April, 2011.



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**LARRY R. HICKS**  
11      UNITED STATES DISTRICT JUDGE  
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